

**Bills Committee on
Fixed Penalty (Smoking Offences) Bill**

**Administration's response to issues raised
at the Bills Committee meeting
on 23 May 2008**

PURPOSE

This paper sets out the Administration's response to issues raised by the Bills Committee at its meeting on 23 May 2008.

BACKGROUND

2. At the above meeting, Members raised the following issues and requested the Administration to provide a response in writing -

- *Whether persons who do not have the means to pay the fixed penalty for smoking offences can be required to undergo smoking cessation counselling in lieu of paying the fixed penalty; and*
- *Whether persons who have been fined several times under the fixed penalty system can be required to undergo smoking cessation counselling in addition to paying the fixed penalty*

ADMINISTRATION'S RESPONSE

Smoking cessation counselling in lieu of payment of the fixed penalty for those who do not have the means to pay the fixed penalty

3. The intention of imposing a penalty of a sufficiently high level is to achieve the desired deterrent effect without being unduly harsh. Smoking is a costly habit. It is difficult to argue that one can afford tobacco products but cannot pay the fixed penalty. Furthermore, if the system allows those who claim that they do not have the means to pay the fixed penalty to undergo smoking cessation counseling instead, there would have to be a mechanism in place to verify such claims. This would render the whole fixed penalty system complicated and costly to administer.

Requiring those who have been fined under the fixed penalty system several times to undergo smoking cessation counseling in addition to paying the fixed penalty

4. The Fixed Penalty (Smoking Offences) Bill is intended to provide for a fixed penalty system to deal with certain offences prescribed by the Smoking (Public Health) Ordinance (Cap. 371). The offences proposed to be dealt with by the fixed penalty system are smoking in a designated no-smoking area and smoking in a public transport carrier. Under the Smoking (Public Health) Ordinance (Cap. 371), smoking itself is not an offence notwithstanding that for public health reasons smoking is to be reduced and discouraged. As such, while we should continue to devote resources to promote smoking cessation by means of education, it would not be appropriate to prescribe smoking cessation counseling service as an additional penalty in the Fixed Penalty (Smoking Offences) Bill.

5. Practically, if smoking cessation counseling is made mandatory for a smoker who has paid fixed penalty several times, the law would have to provide for consequences for those who fail to attend the counseling as required where the offenders intentionally ignore the requirement. There would also have to be enforcement staff deployed to investigate and find out the facts of default cases (e.g. whether the default is due to circumstances beyond the smoker's control such as having fallen ill or whether it is an intentional default), and, if the penalty for such defaulting is not in the form of another fixed penalty, court time is to be spent on hearing the cases and meting out appropriate penalty. All these would render the otherwise simple fixed penalty system much more complicated, and may result in not being able to achieve much savings in enforcement resources (which could be used on enforcement of the smoking offence) and court time.

6. Whilst it is our objective to assist as many smokers to quit smoking as possible, research has pointed out that smoking cessation counseling would be most effective when the recipient is willing to receive such counseling service. There is no available evidence showing that provision of mandatory smoking cessation counseling service or class can effectively cause those who have no intention to quit smoking to quit smoking. As far as we know, mandatory smoking cessation counseling services or classes have not been adopted by any country as a means of penalizing offenders or promoting smoking cessation.

7. Nevertheless, we believe that we should make use of the opportunities to provide the smokers who have been dealt with under the fixed penalty system with information on smoking cessation services. We thus recommend the following actions to be taken -

- (a) to print Department of Health/Tobacco Control Office's smoking cessation hotline on Fixed Penalty Notices;
- (b) to send information on smoking cessation services when a notice under clause 6(2) is issued.

8. In addition, the Department of Health will strengthen smoking cessation services and the publicity of such. The Department is currently planning to co-operate with NGOs to provide more easily accessible smoking cessation services. The Tobacco Control Office itself will also conduct regular talks on smoking cessation at convenient venues. Each client would be individually followed-up by trained nurses. We are confident that the targeted approach under paragraph 7 and these enhanced services for the entire smoking population would significantly improve the accessibility of smoking cessation services to all smokers.